



DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
WASHINGTON, D.C. 20350-1000

SECNAVINST 7320.9A
NAVY IPO-OOL
03 October 1996

SECNAV INSTRUCTION 7320.9A

From: Secretary of the Navy

Subj: LEASING OF DEPARTMENT OF THE NAVY EQUIPMENT FOR
DEMONSTRATIONS

Ref: (a) DOD Directive 7230.8 of 16 Feb 95 (NOTAL)
(b) Title 10, U.S.C., Section 2667
(c) DOD Directive 5410.18 of 3 Jul 74 (NOTAL)
(d) DOD Directive 5410.19 of 19 Jul 79 (NOTAL)
(e) SECNAV Instruction 5720.44A of 3 Jun 87
(f) DOD Instruction 7230.7 of 29 Jan 85 (NOTAL)
(g) Public Law 102-484, Section 1082
(h) DOD Instruction 7230.8 of 9 Jun 76 (NOTAL)

Encl: (1) Contents for Written Findings.
(2) Lease Package Documents
(3) Lease Terms

1. Purpose

a. To implement the leasing provisions of reference (a) by establishing policies and procedures for the leasing of Department of the Navy (DON) equipment to defense contractors and industrial associations for use during or in conjunction with (1) sales demonstrations to foreign governments and (2) displays or demonstrations at international airshows and trade exhibitions.

b. To delegate authority for the approval of the leasing of DON equipment for the purposes described in paragraph 1a.

This instruction has been substantially revised and should be reviewed in its entirety.

2. Cancellation. SECNAVINST 7320.9 of 20 August 1986.

3. Background. Reference (a) updated policies and responsibilities for leasing and demonstrations of Department of Defense equipment. Reference (a) replaced reference (h).

4. Scope. This instruction addresses leases of equipment to defense contractors and industrial associations under the authority of reference (b) for only the purposes described in



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paragraph 1a. For example, it does not concern the provision of equipment for community relations purposes; community relations activities are addressed in references (c), (d), and (e).

5. Delegation of authority. Reference (b) authorizes the Secretary of a military department, in those instances where the Secretary considers it to be advantageous to the United States, to lease real or personal property on such terms as the Secretary considers will promote the national defense or be in the public interest. The authority to approve leases of equipment for the purposes described in paragraph 1a is hereby delegated to the Assistant Secretary of the Navy (Research, Development and Acquisition) (ASN(RD&A)).

6. Definitions. For the purposes of this instruction, the following meanings apply.

a. Equipment. DON personal property that will be displayed or demonstrated or used in conjunction with a display or demonstration (e.g., an aircraft), and any related property (e.g., attached items, ancillary items or systems, replacement parts, and spares).

b. International airshows and trade exhibitions. Events held outside the United States that are organized primarily for promoting the sale of aerospace and other defense products. Events that consist only of the demonstration or display of aircraft and other defense equipment for public enjoyment and community relations, including aerobatic demonstrations and static displays held on specifically designated public days of international airshows or trade exhibitions, are governed by references (c) and (d).

c. Lease charge. The rental charge for the leased equipment, as calculated in accordance with references (a) and (f).

d. Reduced lease charge. Any reduction in the lease charge that would have otherwise been charged under references (a) and (f). An example of a reduced lease charge is a charge for only those actual hours that the equipment is operated in an aerial or live demonstration.

e. Sales demonstration. Efforts by or for a defense contractor or an industrial association to promote foreign military sales or direct commercial sales of equipment.

7. Policy

a. DON equipment may be leased to defense contractors and

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industrial associations under reference (b) for the purpose of sales demonstrations for the benefit of foreign governments or for the purpose of display or demonstration at international airshows and trade exhibitions when:

- (1) The leased equipment is under the control of the DON;
- (2) The leased equipment is not needed for public use during the term of the lease;
- (3) The leased equipment is not excess property as defined in Title 40, United States Code, Section 472;
- (4) The leased equipment can be made available without unduly impacting military readiness, in accordance with reference (a); and
- (5) The leased equipment or its equivalent is not reasonably available from commercial sources.

b. The term of a lease will not exceed the period of time believed to be necessary to prepare for and accomplish the uses for which the equipment is being leased, and to return the leased equipment. In no event will the lease period exceed one year.

8. Responsibilities

a. The ASN(RD&A) will approve the leasing of equipment covered by this instruction. To grant such approval, the ASN(RD&A) must execute a written Determination and Findings (D&F) which documents findings that the lease will conform to the requirements set forth in paragraph 7a of this instruction, and a determination that the lease will be advantageous to the United States and will promote the national defense or be in the public interest. Lease provisions complying with the requirements of paragraph 10 of this instruction will be deemed to promote the national defense or be in the public interest. ASN(RD&A) may approve deviations from the requirements of paragraph 10 of this instruction if such deviations, based on the circumstances of the particular case, promote the national defense or are in the public interest, and they are consistent with applicable laws and regulations. The written findings must also include the findings detailed in enclosure (1).

b. The Chief of Naval Operations (CNO) or Commandant of the Marine Corps (CMC) will issue the statements required in paragraphs 3 and 4 of enclosure (2); the appropriate official to issue the statements will depend upon the service of the requirements branch sponsor for the equipment proposed for lease.

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c. Navy International Programs Office (Navy IPO) will:

(1) Provide advice to the cognizant program office on matters of technology disclosure, security assistance, and international airshow or trade exhibition guidance pertinent to the proposed lease of equipment;

(2) Concur in the Program Executive Officer's (PEO) (or equivalent authority's) request for approval of the D&F;

(3) Provide the Defense Security Assistance Agency (DSAA) with a list of proposed lease equipment for an international airshow or trade exhibition prior to the opening of the event, under reference (a); and

(4) Provide DSAA, within 90 days of the end of an international airshow or trade exhibition, the after action report described in paragraph E3(b) of reference (a).

d. The Office of the ASN(RD&A), Acquisition Business Management, will review the insurance requirements of the lease and (if the lease requires the lessee to acquire insurance) the lessee's insurance certification (or other proof of insurance). That office will assess whether the lessee's proof of insurance meets the insurance requirements of the lease, or whether (if the lease does not require insurance) it is prudent to permit the lessee to be self-insured.

e. The cognizant PEO or equivalent authority will forward the lease package described in enclosure (2) to ASN(RD&A) for approval through the Director, Navy IPO.

f. The cognizant program office for the equipment will:

(1) Coordinate contractor and industrial association requests for leases of equipment with Navy IPO;

(2) Coordinate with the cognizant contracting officer regarding the preparation of the written determination and findings (D&F) described in paragraph 8a for ASN(RD&A)'s signature, and the lease;

(3) Prepare for the cognizant PEO or equivalent authority the forwarding memorandum described in paragraph 1 of enclosure (2); and

(4) Obtain and assemble the documents listed in enclosure (2) for the lease package, and obtain the concurrence of the contracting officer and legal counsel in the lease package.

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g. The cognizant contracting officer will:

(1) Prepare the D&F for ASN(RD&A)'s signature;

(2) Prepare the lease;

(3) Obtain, prior to lease execution, the assessment of the Office of ASN(RD&A), Acquisition Business Management, required by paragraph 8d of this instruction; and

(4) Execute the lease after the ASN(RD&A) has signed the D&F.

9. Procedures. Whenever a defense contractor or industrial association requests that the DON provide equipment for sales demonstrations to foreign governments or for contractor displays or demonstrations at an international airshow or trade exhibition, the following leasing procedures will apply.

a. After receiving a written request from a defense contractor or industrial association, the cognizant program office for that equipment will coordinate with Navy IPO. Navy IPO will advise the program office as to whether the purposes of the proposed lease pose any technology disclosure issues, and as to whether there are any pertinent security assistance considerations and any guidance from the Department of Defense or DON concerning a particular international airshow or trade exhibition which is relevant to the lease. The program office will then evaluate the request, and if that office deems that a lease of the requested equipment is feasible and appropriate under the circumstances, the cognizant contracting officer will prepare the written D&F described in paragraph 8a of this instruction for the ASN(RD&A)'s signature, and the lease. The cognizant contracting officer will also obtain, prior to lease execution, the assessment of the Office of ASN(RD&A), Acquisition Business Management, required by paragraph 8d of this instruction.

b. The program office will prepare a lease package, as described in enclosure (2).

c. The cognizant PEO or equivalent authority will forward the lease package to the Office of ASN(RD&A) via the Director, Navy IPO.

d. After ASN(RD&A) has signed the D&F, the cognizant contracting officer may execute the lease.

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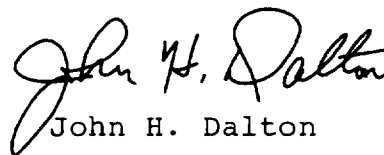
10. Terms of the Lease

a. Each lease executed under this instruction will include the terms set forth in enclosure (3), unless a deviation from these terms is approved in accordance with paragraph 8a of this instruction.

b. A lease may assess a reduced lease charge or no lease charge in those situations where such provisions, when viewed in the context of the totality of the lease terms and of the surrounding circumstances of the lease, will promote the national defense or be in the public interest. National defense or public interest examples include, but are not limited to, encouraging foreign military sales of the equipment, reducing future unit prices for U.S. purchase of the equipment, and sustaining U.S. defense industrial capacity.

c. In all leases for displays or demonstrations at international airshows or trade exhibitions, regardless of the lease charge assessed, there will be a provision in the lease under which the contractor or industrial association agrees to reimburse the Treasury of the United States for those incremental costs required to be reimbursed under reference (g).

d. The DON will normally not assume the risk of loss of or damage to leased equipment. However, when a U.S. Government pilot is the pilot-in-command during flights or when U.S. Government personnel operate the equipment, the DON may assume the risk of loss of or damage to the leased equipment. The DON's assumption of risk when a U.S. Government pilot is the pilot-in-command during flights or when U.S. Government personnel operate the equipment may only take place in those exceptional circumstances where there is a compelling national defense or public interest need for the Navy to enter into a lease with such terms.


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CONTENTS FOR WRITTEN FINDINGS

The written findings described in paragraph 8a of this instruction will include the following:

1. The DON activity proposing to lease the equipment;
2. The type of display or demonstration equipment (for example, an F/A-18 aircraft) being leased, and whether related property (for example, ancillary equipment) will also constitute part of the equipment being leased;
3. Name of lessee (i.e., defense contractor or industrial association);
4. The beginning and ending dates of the lease;
5. Whether the lease will begin and end with the transfer of possession of the leased equipment, or whether it will begin or end at other specified times (e.g., the time of the commencement of the DON's transportation of the leased equipment to a demonstration site, and the time of the completion of the DON's transportation from the demonstration site).
6. The location where the DON will transfer possession of the leased equipment to the lessee and the location where the lessee will transfer possession of the leased equipment back to the DON;
7. The purpose for which the leased equipment is being leased (i.e., sales demonstration to a specified foreign country, or display or demonstration at a specific international airshow or trade exhibition);
8. Whether the leased equipment will be used for a static display or a demonstration (aerial or live), and whether, in the case of an aerial or live demonstration, representatives of a foreign country will be on board the equipment;
9. The location where the sales demonstration to the foreign government will take place, or where the international airshow or trade exhibition will take place;
10. A statement that the lease will comply with references (a) and (b), and this instruction;
11. Whether a lease charge for the full period of the lease will be assessed for the leased equipment;

Enclosure (1)

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12. In the case of no lease charge or a reduced lease charge, the reason why the nonassessment or reduction of the charge will promote the national defense or will be in the public interest (see paragraph 10b of this instruction);

13. Whether U.S. Government personnel will be pilots-in-command during flights of leased aircraft, or operators of leased equipment;

14. A statement that the lessee will bear the risk of loss or damage to the leased equipment during the entire lease period, except in those cases where the DON assumes the risk of loss or damage to leased equipment when a U.S. Government pilot is the pilot-in-command during flights or when U.S. Government personnel operate the equipment (see paragraph 10d of this instruction);

15. In those cases where the DON assumes the risk of loss or damage to the leased equipment when a U.S. Government pilot is the pilot-in-command during flights or when U.S. Government personnel operate the equipment (see paragraph 10d of this instruction), a statement that the DON will assume that risk during those circumstances, and that the lessee will assume the risk of loss or damage to the leased equipment at all other times during the period of the lease;

16. In those cases described in paragraph 15 of this enclosure, an explanation of the compelling national defense or public interest need for the DON's assumption of the risk of loss or damage to the leased equipment when a U.S. Government pilot is the pilot-in-command during flights or when U.S. Government personnel operate the equipment (see paragraph 10d of this instruction);

17. A statement that under the terms of the lease, in all cases the lessee will indemnify and will hold harmless the U.S. Government for any third party claims or liabilities arising from the lease or demonstration;

18. A description of the insurance requirements of the lease and a statement that prior to lease execution, the Office of the ASN(RD&A), Acquisition Business Management will approve the arrangements made by the lessee to meet those requirements;

19. In the case of a lease for a display or demonstration at an international airshow or trade exhibition, a statement that the lessee will pay for all incremental costs required to be reimbursed under reference (g) (National Defense Authorization Act for Fiscal Year 1993);

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20. A statement that, as permitted by reference (g), the cost of the transportation of the leased equipment will not be charged as an incremental cost because the transportation fulfills legitimate training requirements that would otherwise have to be met (applicable in those cases where the DON transports leased equipment for a display or demonstration at an international airshow or trade exhibition, and does not charge the cost of that transportation because that transportation in fact fulfills such legitimate training requirements);

21. Identification of any deviations from the lease terms in enclosure (3) of this instruction;

22. A brief description of any unusual lease provisions, such as permitting the lessee to make modifications to the leased equipment; and

23. A statement that under the terms of the lease, the U.S. Government may revoke the lease at any time at its discretion.

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LEASE PACKAGE DOCUMENTS

The lease package referenced in paragraph 8e of this instruction will consist of the following:

1. a memorandum from the cognizant PEO or equivalent authority to ASN(RD&A) via the Director, Navy IPO, which requests review and approval of the D&F, states that the lease for the equipment will contain all of the lease terms required by paragraph 10 of this instruction (except where a deviation from a required term is requested), identifies any requested deviation from the required lease terms and provides the rationale supporting that deviation, and forwards the documents listed in paragraphs 2 through 4 of this enclosure;

2. the proposed D&F for ASN(RD&A)'s signature;

3. the assessment by the CNO or CMC that the equipment to be leased is not needed for public use for the period of the lease and that it can be made available without unduly impacting military readiness, and CNO's or CMC's recommendation as to whether that equipment should be leased (the equipment's bureau or serial number need not be included in this assessment and recommendation);

4. in the case of an international airshow or trade exhibition, where DON transportation of the leased equipment will not be charged to the lessee because the transportation fulfills legitimate training requirements, a statement from CNO or CMC that the transportation fulfills legitimate training requirements under OPNAVINST 3710.7Q (NOTAL); and

5. the request of the defense contractor or industrial association.

Enclosure (2)

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LEASE TERMS

The lease terms referenced in paragraph 10 of this instruction are as follows:

1. A description of the equipment to be leased, as well as the purposes for which the equipment may be used, and the limitations upon such use.

2. A provision that the leased equipment is furnished "as is," without any express or implied warranty as to its serviceability or fitness for use.

3. A provision requiring the lessee to maintain, protect, and preserve the leased equipment as specified.

4. A requirement for a specified lease charge for the full period of the lease, which will be calculated in accordance with references (a) and (f), except as under the circumstances described in paragraph 10b of this instruction.

5. If the circumstances described in paragraph 10b of this instruction apply, a provision that no lease charge or a specified reduced lease charge will be assessed.

6. In leases with reduced or no lease charges, a provision that the lessee's improvement, maintenance, protection, repair, or restoration of the leased equipment will constitute part or all of the consideration for the lease.

7. A provision that, in addition to any lease charge assessed for the leased equipment, the lessee will pay for any supplies or services provided by Department of Defense personnel in connection with the lease, in accordance with reference (a).

8. A provision that the lessee will not charge, either directly or indirectly, any costs assessed under the lease to any U.S. Government contract, except to the extent chargeable to contracts for foreign military sales under Defense Federal Acquisition Regulation Supplement (DFARS), Section 225.7303-2, in accordance with reference (a).

9. In the case of a lease for an international airshow or trade exhibition, a provision that in accordance with reference (g), the lessee agrees to reimburse the Treasury of the United States for: (a) all incremental costs of military personnel accompanying the leased equipment, including food, lodging, and local transportation; (b) all incremental transportation costs incurred in moving such leased equipment from its normally

Enclosure (3)

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assigned location to and from the event (except that transportation of leased equipment to and from an event that fulfills legitimate training requirements does not constitute an incremental cost that must be reimbursed); and (c) any other miscellaneous incremental costs, not included under (a) and (b), to the U.S. Government that would not have been incurred had this equipment not been leased to the lessee.

10. A provision that no U.S. Government personnel will be pilots-in-command during flights of leased aircraft, or operators of leased equipment, unless otherwise approved in advance and in writing by ASN(RD&A).

11. A provision that the lessee will bear the risk of loss or damage to the leased equipment during the entire lease period, except in those exceptional cases described in paragraph 10d of this instruction. In such exceptional cases, the leases will provide that the DON will assume the risk of loss or damage to the leased equipment when a U.S. Government pilot is the pilot-in-command during flights or U.S. Government personnel operate the equipment, and that the lessee will assume the risk of loss or damage to the leased equipment at all other times during the period of the lease.

12. A provision that the lessee will indemnify and will hold harmless the U.S. Government for any third party claims or liabilities arising from the lease or demonstration in all cases, regardless of whether a U.S. Government pilot is pilot-in-command or U.S. Government personnel operate the equipment.

13. The agreed value of the leased equipment.

14. A provision that the lessee will acquire and maintain, at its sole cost, insurance against any loss or damage to the leased equipment, unless the lease permits the lessee to be self-insured. At a minimum, this insurance will be adequate to cover the depreciated value of the equipment; however, individual leases may require that the insurance be adequate to cover the replacement value of the equipment.

15. Provisions addressing the lessee's responsibilities as to repair or replacement of damaged or destroyed leased equipment, and as to cash reimbursement for damaged or destroyed leased equipment, as are appropriate for the particular lease.

16. A provision that the lessee will acquire and maintain, at its sole cost, insurance covering the lessee's liability under paragraph 12 of this enclosure, within reasonable limits as may be directed by the contracting officer.

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17. In the case of aircraft leases, a provision that approval of the lessee's flight operations and authorization for non-U.S. Government personnel to pilot or fly in leased aircraft will be in accordance with NAVAIRINST 3710.1C (NOTAL) and NAVAIRINST 3710.8B (NOTAL).

18. A provision that if and to the extent that the leased equipment is made taxable by state or local governments under an Act of Congress after the lease has been entered into, the lease will be renegotiated.

19. A provision prohibiting the lessee from entering into a sublease or assignment without the prior written approval of the contracting officer.

20. A provision that U.S. Government may revoke the lease at any time at its discretion.

21. A provision that the lessee must comply with all the requirements of the International Traffic in Arms Regulations (22 CFR 120 et seq.) that are applicable to its activities under the lease.

22. Any other provision that the contracting officer determines to be appropriate to the particular lease and that is consistent with references (a) and (b), and this instruction.